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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUL 19 1993

In re

Amendment of Part 90 of the  
Commission's Rules to Facilitate  
Future Development of SMR Systems  
in the 800 MHz Frequency Band

) 93-144 / FEDERAL COMMUNICATIONS COMMISSION  
) OFFICE OF THE SECRETARY

) PR Docket No. 93-144  
) RM-8117, RM-8030, RM-8029  
)

To: The Commission

COMMENTS ON NOTICE OF PROPOSED RULE MAKING

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July 19, 1993

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**SUMMARY OF COMMENTS OF DIAL PAGE, INC.**

Dial Page, Inc. ("Dial Page"), by its attorneys and pursuant to Commission Rule Section 1.415, respectfully submits comments on the Commission's Notice of Proposed Rule Making, FCC 93-257, 8 FCC Rcd \_\_\_\_ ("NPRM"), released, June 9, 1993, in this proceeding. As shown herein, Dial Page strongly supports the Commission's proposal, and its continued efforts to facilitate implementation of wide-area Specialized Mobile Radio ("SMR") Service systems. Dial Page believes that swift adoption of the regulatory system outlined in the Notice, with the minor modifications recommended herein, will help provide the public with an additional, and therefore competitive, spectrum efficient wireless communications option.

Dial Page supports the Commission's proposal to create predetermined geographic boundaries for EMSP authorizations using the 47 MTAs to define predetermined market boundaries, its proposal to permit only SMR and already authorized General Category frequencies to be used throughout an EMSP system, its two-stage acceptance and processing approach for EMSP systems, and initial eligibility restrictions for EMSP licenses.

Dial Page does, however, recommend the FCC modify two aspects of the application requirements the NPRM describes. First. Dial

clarify its proposal requiring specification of the minimum number of channels which would be accepted by an EMSP applicant.

Dial Page supports the Commission proposal requiring an 800 MHz EMSP system ultimately to cover either 80 percent of the land area, or serve 80 percent of the population within the designated

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**I. Introduction.**

1. Dial Page is a Delaware corporation which through itself and subsidiaries currently provides mobile communications service predominately in nine states in the southeastern United States. Dial Page is currently constructing and implementing a wide area Enhanced Specialized Mobile Radio ("ESMR") network within the

southeast.<sup>1/</sup> To that end, Dial Page has obtained 800 MHz SMR license grants at more than 80 individual sites; it has obtained a waiver of Section 90.631 for extended implementation authority to construct these facilities; it is in the process of acquiring by assignment additional licenses from existing 800 MHz SMR service providers; and it is arranging to manage other licenses' systems as part of the Network. As the Private Radio Bureau is aware, Dial Page has fully explained the proposed structure and operations of its Network, and the Commission has generally cooperated in granting Dial Page the regulatory relief it has requested to implement the Network.

2. The NPRM proposes a fundamental restructuring of the SMR regulatory system. The modifications proposed in the NPRM would affect all SMR operators and would define the SMR industry for years to come. To a large degree this restructured regulatory proposal is necessary to allow proposals such as Dial Page's an opportunity to gain market acceptance. For these reasons, Dial Page supports the bulk of the Commission's NPRM and suggests that adoption of the Commission's proposal with minor modifications will serve the public interest convenience and necessity.

## **II. Background.**

3. The Commission initiated the NPRM in response to petitions filed by the American Mobile Telecommunications

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1/ Dial Page's network includes the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, Tennessee and Virginia.

Educational Radio ("NABER") and A&B Electronics, Inc. ("A&B").<sup>2/</sup> These petitions clearly articulated a need to develop a regulatory scheme which would facilitate the licensing and implementation of wide area SMR systems. The NPRM is responsive to that need. Accordingly, Dial Page supports the Commission's proposed regulatory scheme for wide area SMR systems, with certain caveats and modifications.

### III. Discussion.

4. The NPRM identifies several objectives as crucial for developing an effective regulatory scheme for wide-area SMR systems. They are:

- Reduce the administrative burdens currently associated with filing and processing 800 MHz wide-area SMR requests;
- Develop flexible policies that will permit the development of such systems throughout the country while permitting the continued viability and growth of non-participating SMR systems;
- ensure that wide-area licensees make productive, timely use of their spectrum;
- encourage more efficient use of spectrum, particularly in congested markets, and accommodate implementation of advanced technologies; and

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2/ See RM-8029 (asking the Commission to facilitate licensing of wide area SMRs), filed March 13, 1992 by NABER ("NABER Petition"), RM-8030 (asking the Commission to modify the "40 mile rule," 47 C.F.R. § 90.627(b)), filed May 26, 1992, by A&B Electronics, Inc ("A&B"), and RM-8117 (proposing a wide area licensing program), filed October 26, 1992, by AMTA ("AMTA Blueprint").

5. Dial Page fully supports the Commission's goals outlined above. However, Dial Page also believes that several regulatory matters must still be addressed prior to the adoption of a wide-area SMR licensing scheme. At a minimum, the rules must specify:

- Dial Page's recommendations regarding the above regulatory matters are detailed below.

6. The NPRM defines a wide-area SMR license as one which enables the licensee to reuse substantial numbers of 800 MHz frequencies at multiple sites throughout a specified geographic

Service Provider ("EMSP") licensing structure, according to which future systems would be authorized.

7. The FCC's proposal for EMSP licensing differs from existing waiver policies in two significant ways. First, the Commission recommends replacing the current rules by which licensees are permitted to choose the markets they seek to serve, with establishing in advance the geographic boundaries for EMSP authorizations by using either the 47 Major Trading Areas ("MTAs") or the 487 Basic Trading Areas ("BTAs") to define EMSP market boundaries.<sup>5/</sup> Second, unlike the current policy in which all inter-category channels utilized in the licensee's existing systems may be reused throughout the wide area authorization, the FCC proposes that only SMR, and possibly General Category frequencies be available for reuse.

8. Dial Page supports the Commission's proposal to create predetermined geographic boundaries for EMSP authorizations. Although the current method of awarding spectrum rights has been acceptable up until now, it will not once rules such as those proposed in the NPRM are in place. The establishment of a filing window will likely attract mutually exclusive applications. If each service area is self defined, the Commission will likely be faced with the task of identifying and resolving a myriad of daisy chaining interference problems. In light of the resources and time required to resolve each of these problems, Dial Page supports the FCC's proposal to establish EMSP market boundaries in advance. As

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5/ See NPRM at paras. 11-15.

in cellular and 900 MHz SMR, the Commission will then be able to sort out mutually exclusive applications, and handle those problems efficiently while not delaying those applications that do not present such a problem. After examining the various suggested alternatives, Dial Page supports AMTA's evaluation of the proposed market areas which suggests that the 47 MTAs more closely conform to existing licensee-defined wide-area regions than do the BTAs. As such, MTAs should define the predetermined market boundaries.<sup>6/</sup>

9. Dial Page also supports the Commission's proposal to permit only SMR and already authorized General Category frequencies to be used throughout an EMSP system.<sup>7/</sup> Inter-category frequencies should continue to serve the important purpose of remaining avail-

basis and are already widely used in both traditional and wide-area SMR systems.<sup>8/</sup>

**B. EMSP Eligibility Criteria.**

10. The NPRM proposes a two-stage acceptance and processing approach for EMSP systems. First, the Commission would establish a filing window during which applicants licensed for one or more SMR systems in the MTA as of May 13, 1993, would be permitted to request the use in an EMSP authorization of all frequencies which had been constructed as of the filing date. Grant of the application would permit the licensee to reuse all of its frequencies throughout the MTA.<sup>9/</sup> The FCC would then accept, on a first-come, first-served basis, applications for up to 42 unused channels from new entrants and previously granted EMSP licensees which had secured fewer than 42 frequencies. Also, an existing EMSP licensee which had completed system construction would qualify for up to an additional 42 channels.<sup>10/</sup> The FCC's decision to treat all markets similarly with respect to eligibility criteria and filing procedures is reasonable in light of its proposal to adopt the larger MTA boundary definition.

11. Dial Page also agrees with the FCC's proposal to initially restrict eligibility for EMSP licenses to applicants with operational facilities in the area. Existing licensees have

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<sup>8/</sup> See AMTA Comments at 9.

<sup>9/</sup> NPRM at paras. 24-26.

<sup>10/</sup> NPRM at para. 27.

customer and market expertise as well as the economic foundation and incentive to begin service to the public expeditiously. Accordingly, Dial Page agrees with the FCC's conclusion that the public would benefit from a more viable and expeditiously provided EMSP service by permitting existing licensees first to convert their existing systems to wide-area operation.

12. The NPRM's proposal to limit initial entry to existing licensees is also supported by both existing co-channel protection criteria and the approach proposed for EMSP systems. As the NPRM states:

If applicants without constructed systems were eligible for initial MTA licensing, they would be required to

to require applicants to file a system design demonstrating sufficiently their ability to satisfy construction requirements if they obtain a license. Submission of such a system design will additionally aid the Commission in evaluating the validity of the applicant's implementation plan and related cost estimates required in proposed Rule Section 90.665(e)(5). Dial Page also requests the Commission to clarify its proposal requiring specification of the minimum number of channels which would be accepted by an EMSP applicant.<sup>13/</sup> Additionally, Dial Page supports the Commission's intent to consider loading on an EMSP applicant's traditional SMR systems in determining eligibility, and the FCC's decision not to require a commitment to implement advanced technologies as a qualifying prerequisite to a license grant.

**C. EMSP Application Processing.**

14. In its NPRM, the Commission proposes that licensees be selected by random lottery.<sup>14/</sup> Dial Page, however, supports AMTA's approach for EMSP application processing. In its Blueprint, AMTA recommended a 60 day filing window during which licensees of operational SMR systems in a specified area would be permitted to request use of their frequencies throughout the area as an individual or consortium applicant. Applicants would also be ranked based on the number of frequencies requested in their proposals to resolve issues of mutual exclusivity. Higher ranked

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<sup>13/</sup> NPRM at para. 28.

<sup>14/</sup> NPRM at paras. 26-29.

applicants would be awarded all channels requested that had not already been assigned to a lower-ranked entity.

15. This approach would create administrative ease because it would not require a lottery, competitive bidding or comparative evaluation, except insofar as to identify the number of frequencies. Additionally, AMTA's approach would encourage the inclusion of smaller operators within a given market. Smaller licensees could combine their spectrum to secure a comparatively lower ranking, and larger licensees would have an incentive to seek out the participation of smaller licensees to expand the number of channels in proposed in their applications. So long as this process is limited to truly qualified applicants who can satisfy the construction requirements, opportunities for abuse will be minimal and better handled through negotiation among competing applicants than by administrative fiat.

16. The Commission's Notice also proposes that EMSP licensees construct their systems within one year, consistent with current FCC requirements.<sup>15/</sup> Alternatively, the Notice would permit up to a five year construction period, so long as the licensee placed a sum equal to its estimated cost of completing construction in an escrow account, or obtained a performance bond for the same amount. No funds, however, would need to be set aside for existing facilities. These steps would only be necessary once an EMSP grant is awarded. Dial Page urges the Commission to modify this portion of the notice to require the proposed financial commitment after

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<sup>15/</sup> See 47 C.F.R. §90.631(e).

the negotiation period has ended, but before the lottery is held.

If the requirement is to achieve its desired objectives, it must be

a precondition to inclusion in the lottery. The knowledge that

facilities throughout their systems. Additionally, the NPRM proposes that co-channel interference between EMSP systems in adjacent markets be controlled by limiting the signal strength at the MTA boundary to no more than 22 dbu unless the adjacent market licensee concurs. EMSP licensees which include existing facilities within their wide-area systems would not be required to reduce the signal strength of such stations to satisfy that limitation, but they would not be entitled to protection from the adjacent market licensee greater than that standard. Any resulting interference would presumably be resolved by parties on a cooperative basis.<sup>17/</sup>

19. Dial Page supports the creation of SMR co-channel separation criteria sufficient to ensure protection of existing systems and their customers. As the number of systems increases, protection against interference becomes correspondingly more critical. The NPRM's interference standards are reasonably and consistent with current interference protection standards between co-channel SMR stations.

20. Finally, the NPRM proposes to prohibit assignment of all EMSP licenses for at least three years, and in no case prior to completion of construction. Although Dial Page supports the Commission's efforts to dissuade trafficking of Commission licenses, two factors warrant consideration. First, a distinction should be made between new licensees and those with fully constructed systems who obtain EMSP grants. The policy considerations are different for these two categories of licensees.

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<sup>17/</sup> See NPRM at paras. 35-36.

Where a licensee has already placed the authorized frequencies in place and is serving customers, the EMSP license is, in a sense, ancillary to the underlying traditional stations since they are the predicate for the applicant's stage one eligibility, and will presumably become part of the EMSP system itself. As such, Assignment or transfer of the underlying stations and the associated EMSP grant does not constitute trafficking in FCC licenses and should be permitted.

21. Second, a distinction must be made for transactions which do not indicate any attempt to traffic in licenses. For example, situations where a company undergoes a non pro forma transfer of control or reorganization as a result of issuing shares of stock to the public, or as a result of a larger corporate transaction involving licenses other than the EMSP system should not be restricted under the rules. Such restrictions would hinder legitimate financing efforts by licenses, having no indicia of traditional elements of trafficking. As such, restrictions on such legitimate financial transactions would serve to hinder, rather than promote, the availability of ESMP service to the public.

#### **IV. Conclusion.**

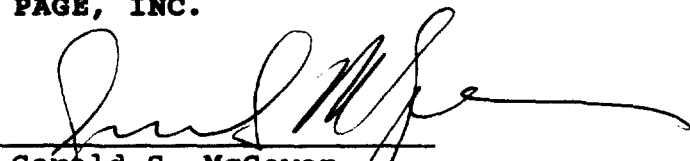
19. Dial Page believes that the Commission's proposed regulatory scheme for wide area SMR systems will facilitate the licensing and implementation of these systems with the caveats and modifications suggested herein. As such, the proposed modifications will serve the public interest, convenience and

necessity by helping to provide the public with an additional, and therefore competitive wireless communications option.

Respectfully submitted,

DIAL PAGE, INC.

By



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July 19, 1993

CERTIFICATE OF SERVICE

I, Lydia N. Hicks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 19th day of July, 1993 caused to have hand delivered a copy of the foregoing COMMENTS to the following:

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